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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,153	01/20/2004	Daniel G. Hess	5H06.1-011	4615

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GARDNER GROFF SANTOS & GREENWALD, P.C.
2018 POWERS FERRY ROAD
SUITE 800
ATLANTA, GA 30339

EXAMINER

GRAYSAY, TAMARA L

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,153

Applicant(s)

HESS ET AL.

Examiner

Tamara L. Graysay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 and 12-24 is/are allowed.
- 6) ☒ Claim(s) 25-37 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date (1 page).
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Priority

1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows:

Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged.

However, the provisional application upon which priority is claimed fails to provide adequate support under 35 U.S.C. 112 for at least claims 25-29 of this application.

In particular the provisional application (60/440884) does not include the claimed subject matter including the claimed structural elements of the blind support bracket and frame for the hunting blind as recited in claims 25-29. Therefore, the Shelton reference has been applied under 35 U.S.C. 102(b) as having been patented more than one year prior to 20 January 2004, the filing date of the present application.

Drawings

2. The drawings are objected to because of the following:

They fail to comply with 37 CFR 1.84(l) because every line (ALL FIGS.) is not sufficiently dense and dark, and uniformly thick and well-defined.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

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pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities:

[0044]: reference character 22 is associated with the ultraviolet lamp, whereas reference character 22 is used for the hunting blind throughout the remainder of the specification and the drawings.

[0047]: the phrase “On the other handle” is confusing.

Appropriate correction is required.

Claim Objections

4. Claims 11 and 30 are objected to because of the following informalities:

a. Claim 11, line 1: [sent-absorbing] should be scent-absorbing to correct a typographical error.

b. Claim 30, line 6: [though] should be through to correct a typographical error.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 30-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The clause that reads, “at least one portion *that extends through* a filtration unit opening and at least one other portion that *overhangs and is supported by* the hunting blind” includes positive recitations of the hunting blind. However, the preamble of the claim is limited to a filtration unit, not a filtration unit in combination with a scent-elimination system, e.g., a hunting blind. Thus, the claim is not clear whether it includes a filtration unit alone or a filtration unit in combination with a scent-elimination system, i.e., a hunting blind. The scope of the claim must be clarified by clearly setting forth the metes and bounds of patent protection desired.

The claim has been treated as a subcombination filtration unit extendable through

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 33-37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to nonstatutory subject matter.

Then Assistant Secretary and Commissioner of Patents and Trademarks, Donald J. Quigg, issued a notice in the Official Gazette stating, "A claim directed to or including within its scope a human being will not be considered to be patentable subject matter under 35 U.S.C. 101. The grant of a limited, but exclusive property right in a human being is prohibited by the Constitution." 1077 OG 24 (1987), reprinted in 1146 TMOG 24 (1993).

In the present application, the method includes the step of "positioning the hunter in a blind" which requires a human being in order to perform the method. Therefore, the claim is directed to nonstatutory subject matter, i.e., a human being.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Bean (US-5613512).

a. Claim 25: Bean discloses a blind support comprising: a tree-mounting bracket (31) adapted for mounting to a tree (4); and a frame (33, 45, 46) adapted for mounting to the bracket (32) via element 2, 36, 40, etc.) and supporting the blind (see FIG. 1).

b. Claim 26: The Bean support frame (33, 45, 46) includes an end member (33) and two side members (45, 45, 46, 46) pivotally coupled (see bolt and nut 56, 51 in FIGS. 4, 5, 6, 7).

8. Claims 25 and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Shelton (US-6434877).

a. Claim 25: Shelton discloses a blind support comprising: a tree mounting bracket (40a, 27a, 27b) for mounting to a tree (5) (see FIG. 7, 8); and a frame (20a, 20b) adapted for mounting to the bracket and supporting the blind (see FIG. 7, 8 which depict the bracket and frame interconnected).

- b. Claim 27: The Shelton tree-mounting bracket includes two connector members (27a, 27b) and the support frame includes two connector members (22a, 22b) that mount to the bracket connector members (see FIG. 7 and the bracket connector members 21a, 21b that overlap the frame connector members 22a, 22b).
- c. Claim 28: The Shelton bracket connector members (28a, 28b) are outwardly angled (at portion 28a, 28b the bracket connector members are outwardly angled relative to each other as depicted in FIG. 7, 8).
- d. Claim 29: The Shelton bracket comprises a lateral member (portion 40a as depicted in FIG. 8), two connector members (27a, 27b) at opposing ends of the lateral member (see FIG. 8), two tree-mounting members (30a, 30b) extending vertically from the lateral member (see FIG. 9), and a tree-circumscribing strap (the portion of the strap between 43a and 43b as well as portion 40b as depicted in FIGS. 7-9) coupled to the tree-mounting members, wherein the connector members (27a, 27b) couple to the frame (20a, 20b at coupling 23a, 23b).

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9. Claim 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Dauphinee (US-2511497).

a. Claims 30 and 32: Dauphinee discloses a filtration unit (10) comprising: a scent-elimination element (granular activated carbon 12 (3:6-9), an air mover (motor 21 and fan 22, 23) for drawing scent-carrying air across the scent-elimination element and directing the now unscented air out (3:51-55).

b. Claim 31: Dauphinee discloses “remote” on/off control switch electrically connectable to the filtration unit (a plug 29 is a remote on/off control switch, as broadly recited).

Allowable Subject Matter

10. Claims 1-24 are allowed. Notwithstanding the objection to claim 11 noted above.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Donnelly (US-3766844) teaches a filtration unit for a shelter that has an air inlet at the top (64) and a filtration outlet at the bottom (65) (FIG. 4).
- White (US-5117821) teaches a hunting mask for filtering breath odor.
- Tzabanakis (US-4524792) teaches a blind bracket and support for mounting on a tree.
- Sasaki (US-6233749) teaches an upwardly drawn scent elimination system that directs the cleaned air through a lower air filtration opening (11, 12, 20).
- Vickers (US-5678247) teaches odor absorbing cloth.
- Stiros (US-2004/0069147) teaches air deodorization with a detachable cartridge whereby air movement enhances the deodorization of air flowing through the filter [0017].
- Kvietok (US-2004/0129143) teaches an activated carbon filter [0017]; a wide variety of carbon based filter media is known in the art [0018]; the use of air moving means enhances the odor adsorption because pressure drops across the carbon filter material, however, in confined spaces such air movement is difficult to achieve without relatively high operating power [0019-0020].
- Varnado (US-6588440) teaches a support frame (41, 42) for a blind (50) attached to a tree (FIG. 7).
- Jennings (US-6397869) teaches a tent with a remote control (7) for a fan (6) (e.g., FIG. 3).

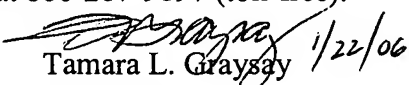
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- Kindblad (DE-3203674-A) teaches a tent device for clearing smells from bedridden patients by drawing air over the patient and re-circulating the air on an opposite side of the patient.
- Lippuner (EP-933049-A1) teaches downwardly directed air for scent-elimination of an air conditioned freezer utilizing the naturally rising cold air flow.
- Fitoussi (WO-00/33940-A1) teaches an air filter using active carbon.
- Taihei Bussan KK (JP-2000-279932-A) teaches removal of bad odor by filtering through a filter containing lumps of activated carbon or charcoal to prevent environmental pollution.
- Blake (article, Ironman whitetails) includes various scent-elimination provisions for hunters (see inset on 47).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is (571) 272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo, can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tamara L. Graysay
Examiner
Art Unit 3636

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